The University of the State of New York

The State Education Department
State Review Officer
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No. 15-007

Application of a STUDENT WITH A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:
New York Lawyers for the Public Interest, attorneys for petitioner, Irene M. Mendez, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Theresa Crotty, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) which denied her request to be reimbursed for her daughter's tuition costs at the Cooke Center School (Cooke) for the 2013-14 school year. Respondent (the district) cross-appeals from that portion of the IHO's decision stating that it bore the burden of proof to demonstrate that the assigned public school could implement the April 2013 IEP. The appeal must be dismissed. The cross-appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C.

§§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

With regard to the student's educational history, the hearing record shows that the student attended 12:1+1 special classes in district public schools through the 2009-10 school year (Tr. pp.

265-66; Parent Exs. A at p. 2; K at p. 2). The student began attending Cooke for the 2010-11 school year (see Tr. p. 303; Parent Ex. K).[1]

On April 23, 2013 the CSE convened to conduct the student's annual review and to develop an IEP for the 2013-14 school year (see Parent Ex. B at pp. 1, 18). Finding the student eligible for special education as a student with an intellectual disability, the April 2013 CSE recommended a 12-month school year program in a 12:1+1 special class placement at a specialized school with related services consisting of one 45-minute session per week of counseling in a group; one 45-minute session per week of physical therapy (PT) in a group; one 45-minute session per week of individual PT; and two 45-minute sessions per week of speech-language therapy in a group (id. at pp. 1, 12, 13, 16).[2] In addition, the CSE recommended that the student participate in adapted physical education as well as alternate assessment due to the student's significant academic deficits (id. at pp. 14-15, 16). The CSE further recommended 17 annual goals as well as supports for the student's management needs (id. at pp. 4, 5-11).

In a letter dated June 17, 2013, the parent rejected the April 2013 IEP because the "teaching ratio" of its placement recommendation was "too large" to address the student's "needs for repetition and individualized support" (Parent Ex. G at p. 1). The parent further asserted that she had "not received notice that [the student] [had] been placed in a particular school" (id.). Based on these concerns, the parent stated she would unilaterally place the student at Cooke for the 2013-14 school year (id.). The parent also indicated that she would seek reimbursement for the costs of the student's placement at Cooke as well as round trip transportation from Cooke to the student's after school care program (id.).

In a final notice of recommendation (FNR), dated June 18, 2013, the district summarized the 12:1+1 special class placement recommended in the April 2013 IEP and identified the particular public school site to which the district assigned the student to attend for the 2013-14 school year (Parent Ex. D).

By letter, dated August 23, 2013, the parent identified additional concerns with the April 2013 IEP and also contended that the assigned public school site was inappropriate for the student (Parent Ex. H at pp. 1-2). With respect to the April 2013 IEP, the parent asserted that it was inappropriate because it "lack[ed] post-secondary goals and transition [services]," as well as a goal pertaining to fine motor skills (id. at pp. 1-2).[3] As for the assigned public school site, the parent asserted that both the school and a classroom that she observed were too large for the student (id. at p. 2). The parent further expressed concern that the assigned public school could not implement the PT services included in the April 2013 IEP because, according to the parent, over 40 percent of the assigned public school's students were not receiving their mandated PT services (id.). Based

[1] The Commissioner of Education has not approved Cooke as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.[7]).

[2] The student's eligibility for special education as a student with an intellectual disability is not in dispute (see 34 CFR 300.8[c][6]; 8 NYCRR 200.1[zz][7]).

[3] The parent also reiterated her contention that the size of the special class placement recommended in the April 2013 IEP was "too large" for the student (Parent Ex. H at p. 1).

on these concerns, the parent reiterated her intention to enroll the student at Cooke for the 2013-14 school year and seek the costs of the student's tuition from the district (id.).

A. Due Process Complaint Notice

In a due process complaint notice, dated March 18, 2014, the parent asserted that the district failed to offer the student a free appropriate public education (FAPE) for the 2013-14 school year (Parent Ex. A at pp. 1-5). With respect to the April 2013 IEP, the parent argued that the 12:1+1 special class placement was inappropriate because it was "too large" to meet the student's needs (id. at p. 3). The student, according to the parent, required a "smaller setting" as well as "a classroom taught by multiple teachers" (id.). The parent also alleged that the CSE failed to include post-secondary goals and identify the student's transition needs (id.). The parent further contended that the IEP lacked a PT goal related to the student's fine motor needs (id. at p. 4).

As for the assigned public school site, the parent alleged that it could not implement the April 2013 IEP because information obtained by the parent indicated that over 40 percent of the school's students did not receive their mandated PT services (Parent Ex. A at p. 4). The parent further argued that the classroom she observed at the assigned public school site "did not appear to group students" based on their needs as required by State regulations (id.). The parent further expressed concern regarding the makeup of the student population at the school, which "included older . . . and more mature students" (id.). Finally, the parent objected to the fact that the school was a "relatively large building" and indicated that this could "overwhelm" the student (id.).

The parent additionally contended that Cooke was an appropriate unilateral placement that met the student's needs, noting that the student made progress in this setting and "receive[d] all the therapies" recommended in the April 2013 IEP (Parent Ex. A at p. 4). Therefore, the parent sought the costs of the student's tuition at Cooke for the 2013-14 school year, as well as transportation to and from Cooke and the student's after school program (id. at p. 5).

B. Impartial Hearing Officer Decision

An impartial hearing convened on June 11, 2014 and concluded on July 22, 2014 after four days of proceedings (see Tr. pp. 1-319). In a decision, dated December 3, 2014, the IHO found that the district offered the student a FAPE for the 2013-14 school year (IHO Decision at pp. 2-3, 43-50).

First, the IHO found that the April 2013 IEP's 12:1+1 special class placement recommendation was appropriate to meet the student's needs (IHO Decision at pp. 44-46). The IHO observed that the April 2013 IEP addressed the student's needs and, specifically, each of the "concerns that the family . . . assert[ed] [were] essential" for the student such as "small group instruction, frequent teacher check-ins, redirection, scaffolding, and repetition" (id. at p. 45). The IHO also noted that the placement recommended by the April 2013 CSE was, in all material respects, similar to the student's program at Cooke (id. at pp. 44-45). The IHO further found that the parent's dissatisfaction with district 12:1+1 special class placements offered to the student in prior years were not relevant to an analysis of the April 2013 IEP (id. at p. 44).

Next, with respect to the April 2013 CSE's consideration of post-secondary goals and transition services, the IHO agreed with the parent that the April 2013 IEP lacked this information

but found that this omission did not rise to the level of a denial of FAPE (IHO Decision at pp. 43-44).[4] Nevertheless, the IHO noted that this represented "an important gap in the student's IEP" and ordered the CSE to reconvene and address the student's "transition goals and planning" (id. at p. 44).

With regard to the assigned public school site, the IHO found that the parent's specific concerns were speculative and, thus, did not result in a denial of FAPE (IHO Decision at pp. 46-48). After reviewing pertinent authority within the Second Circuit, the IHO concluded that the parent had a right to "challenge [the] specific site offer[]" and, further, that the district bore the burden of proof as to the assigned public school's ability to implement the IEP (id. at p. 48). The IHO found that the district met this burden by presenting a witness who testified as to the issues raised in the parent's due process complaint notice (id.). Turning to the parent's specific contentions, the IHO found that the parent's concerns about the 12:1+1 classroom that she observed mirrored her concerns with the IEP's placement recommendation and, as such, did not constitute a denial of FAPE (id.). The IHO further found that the parent's concerns about whether the assigned public school could implement the PT services on the April 2013 IEP and whether the assigned classroom contained appropriate social peers were speculative and otherwise without merit (id. at pp. 48-49).

Accordingly, the IHO concluded that the district offered the student a FAPE for the 2013-14 school year (IHO Decision at pp. 49-50). The IHO also issued alternative findings that, had the district failed to offer the student a FAPE, he would have found that Cooke was an appropriate unilateral placement for the student for the 2013-14 school year and that no equitable considerations affected the parent's sought relief (id. at p. 3).

IV. Appeal for State-Level Review

The parent appeals, arguing that the IHO erred in concluding that the district offered the student a FAPE for the 2013-14 school year. First, the parent contends that, while the IHO correctly stated the applicable burden of proof, he failed to apply it in his decision. Next, the parent avers that the IHO erred in finding that the April 2013 IEP's placement recommendation was reasonably calculated to provide educational benefits. The parent argues that a 12:1+1 special class placement could not provide the student with the "individualized attention and small group instruction" that she required in order to achieve educational benefits. The parent also asserts that the student's prior experience in a 12:1+1 special class in a district public school demonstrated that such a placement was inappropriate. The parent further argues that the IHO erred in finding that the April 2013 CSE's failure to develop post-secondary goals did not rise to the level of a denial of a FAPE. The parent avers that such goals were required on the student's IEP and were a "crucial aspect" of her educational needs.

The parent also appeals the IHO's finding that the assigned public school site was capable of implementing the April 2013 IEP and otherwise appropriate for the student. In this regard, the parent argues that the student population would not have been socially appropriate for the student.

[4] Although the April 2013 IEP contained no post-secondary or vocational goals, the IHO observed that the effect of this shortcoming was ameliorated by the "strong vocational focus" offered at the assigned public school site (IHO Decision at p. 44).

The parent also asserts that the size of the assigned public school building rendered it inappropriate for the student. The parent further contends that the district failed to prove at the impartial hearing that the assigned public school could implement the PT services included in the April 2013 IEP. Finally, the parent avers that the IHO correctly determined that Cooke was an appropriate unilateral placement for the student and that no equitable considerations should diminish or preclude an award of tuition reimbursement.

In an answer, the district responds to the parent's petition by variously admitting or denying the allegations raised by the parent and argues that the IHO correctly determined that it offered the student a FAPE for the 2013-14 school year. The district also interposes a cross-appeal asserting that the IHO erred by indicating that the district bore the burden of proof as to whether the assigned public school site could implement the April 2013 IEP. In an answer to the district's cross-appeal, the parent argues that the IHO properly assigned the burden to the district to establish its ability to implement the IEP at the assigned public school.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 180-83, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720 [2d Cir.

Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "'academic, developmental, and functional needs'" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by

the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

A. Scope of Review

First, the parent contends that the IHO inappropriately applied the burden of proof in reaching his determination that the district offered the student a FAPE. Under the IDEA, the burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer v. Weast, 546 U.S. 49, 59-62 [2005] [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]). However, as noted above, under State law, the burden of proof has been placed on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85; M.P.G., 2010 WL 3398256, at *7).[5] Here, there is no evidence that the IHO misapplied the parties' respective burdens of proof (see IHO Decision at pp. 42-49). The IHO, instead, weighed the evidence adduced at the impartial hearing and resolved the primary disputed issues in the district's favor (see id.). Although the parent disagrees with the conclusions reached by the IHO, such disagreement does not reveal that the IHO failed to correctly apply the burden of proof in his analysis. The parent's protestations to the contrary, therefore, are without merit.[6]

Next, the district cross-appeals the IHO's determination to the extent that the IHO stated that the district carried the burden of proof with regard to whether the assigned public school could implement the April 2013 IEP. This claim is not properly presented by the district because the district was not aggrieved by any aspect of the IHO's decision. The IDEA and State regulations

[5] The Schaffer Court left open the question of whether the States may have authority to shift the burden of proof through legislation (Schaffer, 546 U.S. 49, 61-62).

[6] Even assuming for purposes of argument that the IHO allocated the burden of proof to the parents, the harm would be only nominal insofar as there is no indication that this was one of those "very few cases" in which the evidence was in equipoise (Schaffer, 546 U.S. at 58; Reyes v. New York City Dep't of Educ., 760 F.3d 211, 219 [2d Cir. 2014]; M.H., 685 F.3d at 225 n.3; A.D. v. New York City Dept. of Educ., 2013 WL 1155570, at *5 [S.D.N.Y. Mar. 19, 2013]).

provide that only a party who has been "aggrieved" by the decision of IHO may appeal an IHO's decision to an SRO (20 U.S.C. § 1415[g][1]; 8 NYCRR 200.5[k][l]; see J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at *9-*10 [S.D.N.Y. Nov. 27, 2012], reconsideration denied, 2013 WL 1803983 [SDNY Apr. 24, 2013]). Here, the IHO's decision denied the parent's requested relief and resolved the disputed issues in the district's favor (IHO Decision at pp. 43-50). Therefore, the district was not entitled to cross-appeal the IHO's decision in this instance (see D.N. v. New York City Dep't of Educ., 905 F. Supp. 2d 582, 588 [S.D.N.Y. 2012] [holding that the parent obtained all the relief she sought and therefore was not aggrieved and had no right to cross-appeal any portion of the IHO decision, including unaddressed issues]). Even assuming for purposes of argument that it was permissible for the district to interpose a cross-appeal, it was not prejudiced by the IHO's statement of the applicable burden of proof because the IHO found that the district, in fact, met this burden (IHO Decision at p. 48). The district's cross-appeal is, therefore, dismissed. Nonetheless, as the parent's challenges to the assigned public site are addressed herein, the law applicable to parties' dispute is discussed below.

B. April 2013 IEP

1. 12:1+1 Special Class

On appeal, the parent argues that the IHO erred by finding that the April 2013 CSE's recommendation of a 12:1+1 special class in a specialized school was appropriate for the student. Specifically, the parent contends that this classroom configuration did not contain a sufficient amount of teachers and would not be able to meet the student's needs for individualized and small group instruction. A review of the evidence in the hearing record supports the IHO's determination.

In order to assess the April 2013 CSE's placement recommendation, a brief discussion of the student's present levels of performance, as described in the April 2013 IEP, is necessary to frame the below discussion. In developing the student's April 2013 IEP, the CSE considered: a January 2013 psychoeducational evaluation report; a January 2013 speech-language report; a February 2013 occupational therapy (OT) report; a February 2013 PT report, and a March 2013 Cooke progress report, which included results from an October 2012 administration of the Group Reading Assessment and Diagnostic Evaluation and the Group Mathematics Assessment and Diagnostic Evaluation and a December 2012 administration of the Adaptive Behavior Assessment System-Second Edition (ABAS-II) (Tr. pp. 46-47; Parent Ex. C at p. 1; see generally Dist. Exs. 5-9).

With respect to the student's cognitive ability and academic achievement, the IEP indicated that the student attained a full scale IQ of 59 on the Wechsler Intelligence Scales for Children-Fourth Edition, as well as standard scores on subtests of the Wechsler Individual Achievement Test, Third Edition that ranged from a high of 78 in listening comprehension to a low of 53 in word reading (Parent Ex. B at p. 1; see Dist. Ex. 5 at pp. 4-5). Included in the April 2013 IEP, and consistent with these scores, were December 2012 results from the Adaptive Behavior Assessment System-Second Edition revealing scores in the "extremely low" range (Parent Ex. B at p. 2; see Dist. Ex. 9 at pp. 24, 27). The April 2013 IEP also included information provided by the student's then-current Cooke mathematics teacher at the April 2013 CSE meeting (Parent Ex. B at pp. 2-3; see Dist. Ex. 3 at pp. 1-2; Parent Ex. C at pp. 1-3). According to the April 2013 IEP and

contemporaneous meeting minutes, the student's mathematics teacher informed the CSE that the student's test scores were consistent with her functioning in school (Parent Ex. B at p. 2; see Dist. Ex. 3 at p. 1).

As for academics, the April 2013 IEP reported the student's then-current level of classroom functioning in mathematics, humanities, and reading, as well as her preferred styles of learning (Parent Ex. B at pp. 2-3). The IEP reported that, in mathematics, the student worked on "addition, subtraction[,] . . . multiplication [and] early division" (id. at p. 2). While the student could add and subtract, she was working on regrouping 3-4 digits and was "inconsistent" in her ability to do so (id.). The student had not yet mastered multiplication facts and needed support to determine which operations to use when completing word problems (id.). The student was "working on" estimation and possessed a "basic understanding" of division into halves, thirds, and fourths but required support when working with fractions (id.). The student understood the concept of money and could identify coins with a value of up to one dollar (id. at p. 3).

In humanities, the student was at a "transitional" reading level and functioned at approximately a second grade level (Parent Ex. B at p. 3). The student made connections and could support her responses, although many of these connections and responses were superficial (id.). With regard to reading, the student's decoding skills were "developing" (id.). Although the student possessed phonemic awareness, she had "difficulty distinguishing sounds that [we]re similar" (id.). As for the student's learning styles, the IEP indicated that the student enjoyed success in small groups, particularly in humanities class (id.). Participation in small groups allowed the student to "focus her attention" (id.). Additionally, the student required repetition of directions, initial prompts, and modeling (id. at p. 2). The IEP further reported that the student "need[ed] support with organizing her material" as well as reminders to write down her assignments (id. at p. 3).

The April 2013 IEP described the student's speech-language needs with reference to the administration of a January 2013 speech-language evaluation (Parent Ex. B at p. 2; see generally Dist. Ex. 8). The IEP reported that the student "required verbal, visual and gestural support" to complete the evaluation (Parent Ex. B at p. 2; see Dist. Ex. 8 at p. 3). While the student was able to complete the testing with this support, the evaluator noted that the student's attention span was "moderately reduced" with distractibility noted as tasks "increased in complexity" (id.). Expressively, the student "answer[ed] questions using various multi-word utterances," although she often "attempted to change topic, speaking about things unrelated to the task[s] presented" (Parent Ex. B at p. 2; see Dist. Ex. 8 at p. 4). Overall, the student's expressive and receptive language skills were "significantly decreased" (Parent Ex. B at p. 2; see Dist. Ex. 8 at p. 3). For example, during testing, the student was unable "to consistently follow novel multi[-]step directives" and did not possess "age expected academic vocabulary" (id.). Overall, the student exhibited relative strengths in the areas of receptive language and her ability to respond to "verbal and gestural redirection" (id.). The student's greatest area of need was in "understanding and expressing complex ideas regarding academic tasks" (id.).

With respect to the student's social development, the April 2013 IEP described the student as "popular, well liked and very social"; socialization was not described as an area of concern (Parent Ex. B at p. 3). Physically, the IEP noted that the student "ha[d] gross motor delays that interfere[d] with [her] learning" including coordination and balance needs (id. at p. 4). The IEP

further noted that the student experienced difficulty dressing herself and grasping objects (id.). The IEP also stated that the student was diagnosed with a rare syndrome which impacted her physical growth and coordination (id.). The IEP also observed that, as reported in a recent OT evaluation, the student did not evince needs requiring OT services (id. at pp. 2, 3, 4; see Dist. Ex. 6 at p. 4).

After ascertaining the student's present levels of performance and developing annual goals to address these needs, the July 2014 CSE recommended placement in a 12:1+1 special class in a specialized school (Parent Ex. B at p. 12; see id. at pp. 1-11). State regulations provide that a 12:1+1 special class placement is designed to address students "whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such students" (8 NYCRR 200.6[h][4][i]). Management needs for students with disabilities are defined as "the nature of and degree to which environmental modifications and human or material resources are required to enable the student to benefit from instruction" (8 NYCRR 200.1[ww][3][i][d]). A student's management needs shall be determined by factors which relate to the student's academic achievement, functional performance and learning characteristics, social development, and physical development (8 NYCRR 200.1[ww][3][i][d]).

The April 2013 IEP identified the following supports for the student's management need: graphic organizers; visual supports; materials and information broken into small chunks; verbal prompts and teacher modeling; small group instruction; support in note taking skills and guided note taking; frequent teacher check-ins; redirection; repetition; and scaffolded lessons (Parent Ex. A at pp. 2, 4). Consistent with State regulations, these identified needs reflect that an additional adult was needed within the classroom to assist the student (8 NYCRR 200.6[h][4][i]). The hearing record also indicates that the 12:1+1 special class was an appropriate setting in which to address the student's academic and cognitive needs (see Tr. pp. 59-60, 71-72; see also Parent Ex. B at pp. 1-4). In addition to the supports available within a 12:1+1 special class, the CSE also recommended the related services of counseling, PT, and speech-language therapy to support the student's needs in these areas (Parent Ex. B at pp. 12, 16-17). And, to further address the student's physical needs, the April 2013 CSE recommended adaptive physical education (id. at p. 16). According to the April 2013 IEP, the CSE considered a 10-month school year program and a special class in a community school, but rejected such options as insufficiently supportive for the student and insufficient to prevent significant regression of skills (id. at p. 23; see Parent Ex. C at p. 6). The CSE further considered and rejected 6:1+1 and 8:1+1 special classes in a specialized school as "overly restrictive" for the student who was identified as benefitting "from the social opportunities available with more students in the classroom" (id.). Based on the foregoing, in this instance, the April 2013 IEP's unchallenged present levels of performance, which are grounded in the evaluative information in the hearing record, supported the CSE's 12:1+1 special class recommendation.

The parent's concern with the recommended 12:1+1 special class placement, on appeal and as reflected in the April 2013 IEP, is that it did not offer two classroom teachers, which the parent argues was necessary for the student to receive educational benefit (see Parent Ex. B at p. 17). The 12:1+1 special class offered the support of a teacher and supplementary school personnel (8 NYCRR 200.6[h][4][i]). State regulation provides that a special education teacher is one "certified or licensed to teach students with disabilities" (8 NYCRR 200.1). In addition, supplementary school personnel "means a teacher aide or a teaching assistant" (8 NYCRR 200.1[hh];

"Supplementary School Personnel" Replaces the Term "Paraprofessional" in Part 200 of the Regulations of the Commissioner of Education" available at http://www.p12.nysed.gov/specialed/publications/policy/suppschpersonnel.pdf). While a teacher aide may assist teachers in nonteaching duties such as "attending to the physical needs" of students or "supervising students," teaching assistants may provide "direct instructional services to students under the general supervision of a certified teacher" (see 8 NYCRR 80-5.6; see also 34 CFR 200.58[a][2][i] [defining paraprofessional as "an individual who provides instructional support"]). Thus, while not offering two independent teachers, the 12:1+1 special class could provide instructional support from two adults. Moreover, the hearing record reflects that, at the time of the April 2013 CSE meeting, the student received instruction in a classroom containing up to 12 students and a "teacher and an assistant teacher" (Tr. p. 107; see generally Dist. Ex. 9 at pp. 1-22).[7] Thus, the teacher support available in the student's classroom at Cooke was not dissimilar from that offered in a 12:1+1 special class and nothing about the student's needs in the information before the CSE revealed that the student needed two teachers in the classroom in order to receive educational benefit (see generally Dist. Exs. 3; 5-9; Parent Ex. C).

Additionally, it appears from the hearing record that the parent's concern with a 12:1+1 special class placement was based upon the student's prior, negative experiences in this configuration within a district public school several years prior to the April 2013 CSE meeting (see Tr. pp. 265-67; Parent Ex. K at pp. 1, 7). A student's progress under a prior IEP is to varying degrees a relevant area of inquiry for purposes of determining whether a subsequent IEP is appropriate, particularly if the parents express concern with respect to the student's rate of progress under the prior IEP (see H.C. v. Katonah-Lewisboro Union Free Sch. Dist., 528 Fed. App'x 64, 66 [2d Cir. June 24, 2013]; Adrianne D. v. Lakeland Cent. Sch. Dist., 686 F. Supp. 2d 361, 368 [S.D.N.Y. 2010]; M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, at *14-*16 [S.D.N.Y. Sept. 29, 2008]; see also "Guide to Quality Individualized Education Program (IEP) Development and Implementation," Office of Special Educ., at p. 18 [December 2010]). Furthermore, "if a student had failed to make any progress under an IEP in one year," at least one court has been "hard pressed" to understand how the subsequent year's IEP could be appropriate if it was simply a copy of the IEP which failed to produce any gains in a prior year (Carlisle Area Sch. v. Scott P., 62 F.3d 520, 534 [3d Cir. 1995] [noting, however, that the two IEPs at issue in the case were not identical as the parents contended]).

In this instance, however, the alleged negative experiences of student in the public school programs were sufficiently distant in time from the April 2013 CSE meeting (as, at the time of the meeting, the student was attending Cooke for a third school year) that they carry little weight in the analysis of April 2013 IEP (see Tr. p. 303; Parent Ex. K). Further, while there is little information in the hearing record about the student's past educational placement in the district, according to notes about the April 2013 CSE meeting, prepared by the Cooke school psychologist, who attended the meeting, the student attended a 10-month school year program in a 12:1+1 special class in a community school prior to enrolling at Cooke (Parent Ex. C at pp. 1, 6; see Tr. p. 161; Dist. Ex. 2). This is in contrast to the 12-month school year program in the 12:1+1 special

[7] A school psychologist from Cooke, who attended the April 2013 CSE meeting, testified at the impartial hearing that classroom teachers at Cooke "do not have to be certified" and "do not necessarily have state certification" (Tr. p. 195; see Tr. pp. 161, 164-65, 194-95).

class in a specialized school recommended in the April 2013 IEP (see Parent Ex. B at pp. 12, 13, 16). Thus, given the passage of time and the dissimilarities between the prior public school programs and the April 2013 IEP, the student's rate of progress during those earlier school years in the public school is an even less reliable indicator for examining the appropriateness of the April 2013 IEP.[8] In addition, as described above, the April 2013 CSE considered the student's needs as they presented at the time of the meeting, several years after the alleged negative experiences, and chose an educational placement aligned with those needs as presented at the time of the formulation of the IEP in question. Accordingly, the evidence in the hearing record supports the IHO's determination that a 12:1+1 special class was appropriate to meet the student's needs.

2. Transition Services

On appeal, the parent asserts that the IHO erred by concluding that the April 2013 IEP's lack of post-secondary goals or transition activities, while a procedural violation, did not rise to the level of denial of a FAPE. A review of the evidence in the hearing record supports the IHO's determination.

Under the IDEA, to the extent appropriate for each individual student, an IEP must focus on providing instruction and experiences that enable the student to prepare for later post-school activities, including postsecondary education, employment, and independent living (20 U.S.C.§ 1401[34]; see Educ. Law § 4401[9]; 34 CFR 300.43; 8 NYCRR 200.1[fff]). Accordingly, pursuant to federal law and State regulations, an IEP for a student who is at least 16 years of age (15 under State regulations), or younger if determined appropriate by the CSE, must include appropriate measurable postsecondary goals based upon age appropriate transition assessments 20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]; 8 NYCRR 200.4[d][2][ix]).[9]

An IEP must also include the transition services needed to assist the student in reaching those goals (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]). In this regard, State regulations require that an IEP include a statement of a student's needs as they relate to transition from school to post-school activities (8 NYCRR 200.4[d][2][ix][a]),[10] as well as the transition service needs of the student that focuses on the student's course of study, such as participation in advanced placement courses or a vocational education program (8 NYCRR 200.4[d][2][ix][c]). The regulations also require that a student's IEP include needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, the acquisition of daily living skills and a functional vocational evaluation (8 NYCRR 200.4[d][2][ix][d]), as well as a statement of responsibilities of the school district (or

[8] Moreover, the April 2013 IEP was intended for the student's first year of high school (see Tr. p. 79) and, as such, would likely have been implemented in a different environment from that which she previously experienced in district elementary schools.

[9] In addition, State regulations require districts to conduct vocational assessments of students age 12 to determine their "vocational skills, aptitudes and interests" (8 NYCRR 200.4[b][6][viii]).

[10] These are supposed to be listed in the present levels of performance section of a student's IEP (see 8 NYCRR 200.4[d][2][ix][a]).

participating agencies) for the provision of services and activities that "promote movement" from school to post-school.

The evidence in the hearing record demonstrates that the student would have turned 15 years old during the 2013-14 school year school year and, therefore, that the April 2013 CSE should have developed post-secondary goals and transition services at the CSE meeting (Parent Ex. B at p. 1; see 8 NYCRR 200.4[d][2][ix] [CSEs must develop transition services "[f]or those students beginning not later than the first IEP to be in effect when the student is age 15 . . ."]). The district does not dispute that the April 2013 CSE should have developed post-secondary goals and transition services for the student but failed to do so (see Ans. and Cross-Appeal at ¶ 55).

The district school psychologist testified that the student was in eighth grade at the time of the meeting, and the CSE did not create post-secondary goals because they "don't generally plan for after high school before it has begun" (Tr. p. 67). The district psychologist further explained that, in her opinion, it was "a bit too soon to ask the parent of an [eighth] grader to figure out or to discuss or address what's going to happen after high school when high school hasn't started yet" (Tr. pp. 67-68; see also Tr. p. 300). The language of the IDEA and State regulations, however, is not discretionary: districts must develop post-secondary goals and transition services for students during the school year in which they will turn 15 years old (8 NYCRR 200.4[d][2][ix]).[11]

Nevertheless, it appears from the hearing record that there was some discussion of the student's post-secondary interests at the April 2013 CSE meeting for the student (Tr. pp. 272-73, 298-300). The April 2013 IEP also contained a notation that the student was interested in "current events and technology" (Parent Ex. B at p. 4).[12] The IEP also noted that the student had demonstrated the ability to travel independently on the subway (id.). Given these facts, the CSE's failure to develop post-secondary goals and transition services for the student, while a procedural violation, did not rise to level of a denial of FAPE to the student in this instance (see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *9 [S.D.N.Y. Mar. 21, 2013]; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *11 [S.D.N.Y. Mar. 19, 2013]; D.B. v. New York City Dep't of Educ., 2011 WL 4916435, at *9 [S.D.N.Y. Oct. 12, 2011]).

Although the April 2013 CSE's actions did not result in a denial of FAPE to the student for the 2013-14 school year, the IHO's order that the CSE reconvene to develop post-secondary goals for the student was appropriate in light of the procedural violation. Therefore, I will order that the CSE, to the extent it has not already done so, reconvene within 15 days of this decision to assess

[11] Indeed, the IEP coordinator at the assigned public school correctly testified that "the law is pretty clear" that students entering this high school, typically 14 or 15 years old, should have post-secondary goals and transition services identified on their IEPs (Tr. p. 241; see Tr. pp. 222, 240-41). However, the IEP coordinator's testimony that staff at the assigned public school could develop these goals and services for the student when she attended the school is not relevant to a prospective analysis of the April 2013 IEP (see R.E., 694 F.3d at 174 ["the use of retrospective testimony about what would have happened if a student had accepted the [district's] proposed placement must be limited to testimony regarding the services described in the student's [IEP]"]). Thus, to the extent the IHO relied upon this testimony, this portion of his decision must be reversed.

[12] However, the parent did not identify this as an area of interest for the student that was discussed at the CSE meeting (compare Parent Ex. B at p. 4, with Tr. p. 273).

the student's post-secondary goals and vocational needs and, after doing so, include this information on the student's IEP consistent with State regulation.

C. Assigned Public School Site

Finally, the parent's contentions regarding the extent to which students in the classroom would be appropriately grouped, the size of the assigned public school site, and the school's ability to implement the April 2013 IEP's related services turn on how the April 2013 IEP would or would not have been implemented and, as it is undisputed that the student did not attend the district's assigned public school site, the parent cannot prevail on such speculative claims (K.C. v. New York City Dep't of Educ., 2015 WL 1808602, at *12 [S.D.N.Y. Apr. 9, 2015] ["The Second Circuit has clearly held that, where a child never enrolls in the public placement, the adequacy of [a district's] offered placement must be determined on the face of the IEP"]). The sufficiency of the program offered by the district must be determined on the basis of the IEP itself, as "[s]peculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement" (R.E., 694 F.3d at 195; see R.B. v. New York City Dep't of Educ., 2015 WL 1244298, at *3 [2d Cir. Mar. 19, 2015] ["declining to entertain the parents' speculation that the 'bricks-and-mortar' institution to which their son was assigned would have been unable to implement his IEP"] [internal citation omitted]; R.B. v. New York City Dep't of Educ., 589 Fed. App'x 572, 576 [2d Cir. Oct. 29, 2014]; F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 8-9 [2d Cir. 2014] [holding that "the appropriate forum for such a claim is 'a later proceeding' to show that the child was denied a free and appropriate public education 'because necessary services included in the IEP were not provided in practice'"], quoting R.E., 694 F.3d at 187 n.3; K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. 2013] [holding that "'[t]he appropriate inquiry is into the nature of the program actually offered in the written plan,' not a retrospective assessment of how that plan would have been executed"], quoting R.E., 694 F.3d at 187; P.K. v. New York City Dep't of Educ., 526 Fed. App'x 135, 141 [2d Cir. 2013] [holding that "[p]arents are entitled to rely on the IEP for a description of the services that will be provided to their child"]; H.C. v. New York City Dep't of Educ., 2015 WL 1782742, at *3-*4 [S.D.N.Y. Apr. 10, 2015] [finding that, when a parent seeks tuition reimbursement for a unilateral placement, "the complaint generally must be based on defects in the IEP itself rather than from doubts about the specific school's ability to implement the IEP"]; K.C., 2015 WL 1808602, at *12; J.C. v. New York City Dep't of Educ., 2015 WL 1499389, at *24-*27 [S.D.N.Y. Mar. 31, 2015]; M.L. v. New York City Dep't of Educ., 2015 WL 1439698, at *11 [E.D.N.Y. Mar. 27, 2015]; M.M. v. New York City Dep't of Educ., 2015 WL 1267910, at *8 [S.D.N.Y. Mar. 18, 2015]; D.N. v. New York City Dep't of Educ., 2015 WL 925968, at *7 [S.D.N.Y. Mar. 3, 2015]; J.F. v. New York City Dep't of Educ., 2015 WL 892284, at *5 [S.D.N.Y. Mar. 3, 2015]; N.S. v. New York City Dep't of Educ., 2014 WL 2722967, at *12 [S.D.N.Y. Jun. 16, 2014]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012]; see also C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. 2014] [holding that the IDEA confers no rights on parents with regard to school site selection]; Grim, 346 F.3d at 381-82 [holding that the district was not liable for a denial of a FAPE where the

challenged IEP was determined to be appropriate, but the parents chose not to avail themselves of the public school program]).[13]

Here, it is undisputed that the parent rejected the April 2013 IEP and instead enrolled the student in a nonpublic school of her choosing prior to the time the district was required to implement the IEP (see Parent Exs. G at p. 1; H at pp. 1-2). Therefore, the district is correct that the issues raised and the arguments asserted by the parents with respect to the assigned public school site are speculative. Furthermore, in a case in which a student has been unilaterally placed prior to the implementation of an IEP, it would be inequitable to allow the parents to acquire and rely on information that post-dates the relevant CSE meeting and IEP (such as information gleaned from a parental visit to the public school) and then use such information against a district in an impartial hearing while at the same time confining a school district's case to describing a snapshot of the special education services set forth in an IEP (C.L.K., 2013 WL 6818376, at *13 [stating that "[t]he converse is also true; a substantively appropriate IEP may not be rendered inadequate through testimony and exhibits that were not before the CSE about subsequent events and evaluations that seek to alter the information available to the CSE"]). Based on the foregoing, the district was not obligated to present retrospective evidence at the impartial hearing regarding the execution of the student's program or to refute the parents' claims (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Accordingly, the parent cannot prevail on her claim that the assigned public school site would not have properly implemented the April 2013 IEP. Thus, I also find in favor of the district on these claims involving the public school site, but on a different basis than the IHO's reasoning.

VII. Conclusion

In summary, a review of the hearing record supports the IHO's determination that the April 2013 IEP offered the student a FAPE for the 2013-14 school year. This evidence also supports the IHO's finding that the CSE's failure to develop post-secondary goals and transition services for the student, while erroneous, did not rise to the level of a denial of FAPE. Moreover, the parent's arguments pertaining to the assigned public school classroom are speculative and, thus, cannot be entertained on appeal. Therefore, the necessary inquiry is at an end and there is no need to reach the issue of whether Cooke was an appropriate unilateral placement or whether equitable considerations support the parents' claim (see M.C, 226 F.3d at 66; Walczak, 142 F.3d at 134; E.E. v. New York City Dep't of Educ., 2014 WL 4332092, at *10 [S.D.N.Y. Aug. 21, 2014]; D.D-S. v. Southold Union Free School Dist., 2011 WL 3919040, at *13 [E.D.N.Y. Sept. 2, 2011], aff'd, 506 Fed. App'x 80 [2d Cir. Dec. 26, 2012]).

I have considered the parties' remaining contentions and find them without merit.

THE APPEAL IS DISMISSED.

[13] However, while the Second Circuit has held that a district is not required to place implementation details such as the particular public school site or classroom location on a student's IEP, the district is not permitted to deviate from the provisions set forth in the IEP (see R.E., 694 F.3d at 191-92; T.Y., 584 F.3d at 420). The district is required to implement the written IEP and parents are within their rights to compel a non-compliant district to adhere to the terms of the written plan (20 U.S.C. §§ 1401[9][D]; 1414[d][2]; 34 CFR 300.17[d]; 300.323; 8 NYCRR 200.4[e]).

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that, to the extent it has not already done so, the CSE shall reconvene within 15 days of this decision to assess the student's post-secondary goals and vocational needs and, after doing so, include this information on the student's IEP.

Dated: **Albany, New York**
May 6, 2014

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JUSTYN P. BATES
STATE REVIEW OFFICER